

NOMINATION OF JOLENE MORITZ MOLITORIS TO  
BE ADMINISTRATOR OF THE FEDERAL RAIL-  
ROAD ADMINISTRATION

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Y 4. C 73/7: S. HRG. 103-249

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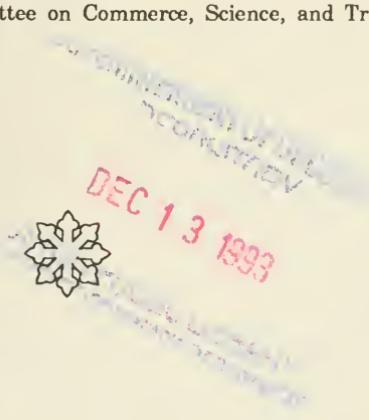
HEARING  
BEFORE THE  
COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE  
ONE HUNDRED THIRD CONGRESS  
FIRST SESSION

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JULY 13, 1993

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Printed for the use of the Committee on Commerce, Science, and Transportation



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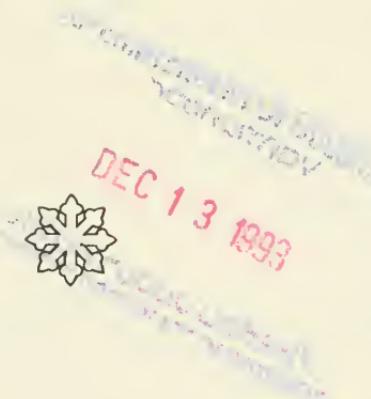
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# **NOMINATION OF JOLENE MORITZ MOLITORIS TO BE ADMINISTRATOR OF THE FEDERAL RAILROAD ADMINISTRATION**

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**TUESDAY, JULY 13, 1993**

**U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.***

The committee met, pursuant to notice, at 2:30 p.m. in room SR-253, Russell Senate Office Building, Hon. J. James Exon, presiding.

Staff members assigned to this hearing: Donald M. Itzkoff, senior staff counsel, and Rebecca A. Kojm, professional staff member; and Emily J. Gallop and Susan Adams, minority professional staff members.

## **OPENING STATEMENT OF SENATOR EXON**

Senator EXON. The committee will please come to order. This afternoon the Commerce Committee will review the nomination of Jolene Moritz Molitoris of Ohio to be Administrator of the Federal Railroad Administration, commonly called the FRA. If confirmed, and I predict that she will be, Ms. Molitoris will be the first woman ever to serve as the FRA Administrator.

The Federal Railroad Administration is responsible for carrying out all railroad safety laws of the United States. The FRA Administrator is charged with ensuring that these laws are uniformly administered and enforced.

The Surface Transportation Subcommittee, which I chair, has focused very carefully on its oversight of these important railroad safety issues. In the 102d Congress the subcommittee considered and reauthorized the rail safety programs for the FRA as well as new initiatives in grade-crossing safety, both of which were enacted into law last year.

I am pleased to note Ms. Molitoris' leadership in the Operation Lifesaver in Ohio, an effort which tracks my own strong commitment in the Senate to providing for the safest possible railroad system in the United States.

In addition to this vital emphasis on safety, the Surface Transportation Subcommittee has actively shaped the policies affecting the economic welfare of the railroad industry, its workers, and its passengers and users. In the last Congress the subcommittee debated the future role of Amtrak as part of its reauthorization responsibilities, leading to the passage of continuing legislation for our national railroad passenger system. Next year, we again will

revisit this area as Amtrak confronts fundamental challenges to its mission.

The subcommittee has heard testimony on the implications for our surface transportation networks of the North American Free Trade Agreement. We will continue to remain centrally involved as Congress considers the NAFTA.

In addition, other issues directly affecting the economic regulation of the railroad will continue to come before the subcommittee. In the area of high-speed ground transportation, I would point out that the Surface Transportation Subcommittee has been a pioneer in establishing a coherent national policy in this important area.

Since 1989, the subcommittee has held four hearings on high-speed rail and magnetic levitation, passed legislation in the Senate, and helped forge the high-speed ground transportation provisions of the 1991 surface transportation reauthorization measure. The President's new proposal in this regard is now before the Congress, and we are presently refining and working toward passage of these important initiatives.

To the nominee, I say that I have enjoyed fine personal working relationships with your predecessors. But in all too many cases, unfortunately, this committee and our counterpart committees in the House have had to mandate by law critical safety actions that we believe the agency should have taken on its own initiative in the first place. I understand that this has contributed to a backlog of rulemakings which are still pending. So, I would hope that we would be able to work together very closely in the future in order to prevent this type of situation from recurring.

Today the railroad industry faces new challenges and certainly, and I emphasize, new possibilities and opportunities. Your vision of the Federal Railroad Administration and the position that you will be assuming, assuming you are confirmed, will be central to the industry's ultimate success in meeting these challenges as the railroads, which first began operating in the United States in the 1830's, approach the 21st century.

I am pleased to note your extensive professional experience in transportation which you bring to the important position of Administrator of the FRA. Your background in State government and in agency management also should serve you very well.

I find your enthusiasm for trains most encouraging, and look forward to establishing a strong and positive working partnership with you following your confirmation. Mr. Chairman, your comments, please.

#### **OPENING STATEMENT OF SENATOR HOLLINGS**

The CHAIRMAN. Today the committee is holding a hearing on the nomination of Jolene Molitoris, of Ohio, to be Administrator of the Federal Railroad Administration within the Department of Transportation. This position is an important one, and I am pleased to have before us a nominee of evident professional qualifications and experience with rail transportation policy issues.

If confirmed as FRA Administrator, Ms. Molitoris will be responsible for administering and enforcing the railroad safety laws of the United States. The FRA also plays a critical role in implementing Federal policies intended to ensure the vitality and economic

health of the Nation's railroads, rail labor, and the railroad supply industry. In addition, if confirmed, Ms. Molitoris will be confronted with decisions regarding many important rail issues, including the appropriate role and mission of the National Railroad Passenger Corporation—Amtrak—as well as proposals for an increased Federal role in promoting the development of new high-speed ground transportation systems in this country. These challenges will require significant effort and commitment on the part of the FRA Administrator.

The nominee brings strong experience in rail transportation and agency management at the State level to the tasks which lie ahead at the FRA. Ms. Molitoris has served as deputy director of the Ohio Department of Transportation and has held a number of other senior executive positions over the past 15 years with both the Ohio DOT and the Ohio Rail Transportation Authority.

I welcome the nominee to the committee, and I look forward to her testimony.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Mr. Chairman. Again, on behalf the committee we are pleased to welcome you here this afternoon, and I look forward to your testimony. Madame nominee, would you please come forward at this time?

While you are coming forward, I would like to ask unanimous consent, and without objection it is so ordered, that the statements from Senator John Glenn of Ohio and Senator Howard Metzenbaum also of Ohio be entered into the record. Both Senators wanted to be here personally to introduce you this afternoon, but other obligations in the Senate have required that they be elsewhere due to commitments that they could not break. I would note that Senator Glenn is now on the floor managing reauthorization and changes in the Hatch Act. So, the statements by your two Senators are added into the record at this time.

[The prepared statement of Senators Glenn and Metzenbaum follow:]

#### PREPARED STATEMENT OF SENATOR GLENN

I regret that I am unable to present these remarks in person. Unfortunately, debate over Hatch Act reform which I am floor managing is scheduled at the same time as this hearing. And that's the only thing that could keep me away from the confirmation hearing of an outstanding Ohioan like Jolene Molitoris.

Jolene is an excellent choice for the Federal Railroad Administration. She has the commitment, enthusiasm, and keen knowledge of rail issues that will allow her to excel at the FRA. And those of us who know her, know that she will excel. When given an opportunity—Jolene always makes the most of it.

For more than 15 years, she has been a leader on rail policy in Ohio. Jolene served with distinction as head of the Ohio Transportation Department's Rail Division under former Gov. Richard F. Celeste. Before joining the Celeste administration, Jolene managed all freight and passenger programs in Ohio as executive director of the Ohio Rail Transportation Authority.

High-speed rail development in Ohio offers a good example of Jolene's foresight and vision. Jolene was instrumental in passing legislation in Ohio to spur high-speed rail development. She served as an effective and knowledgeable spokesperson garnering public support for this new technology. In recognition of her outstanding leadership in this area, the High Speed Rail Association presented Jolene with the President's Award for Outstanding Achievement in 1992 and 1993.

Jolene has also been especially active in another area of deep concern to me—rail safety. Jolene has been a real leader in the promotion of rail safety in Ohio. She helped establish the FRA safety school in Columbus, OH, and was chair of Ohio Operation Lifesaver.

We in Ohio are very proud of Jolene Molitoris. And we look forward to her tenure as Administrator of the Federal Railroad Administration with great expectation. We know she will do a great job and we wish her well.

#### PREPARED STATEMENT OF SENATOR METZENBAUM

I had written to you last month in support of the nomination of Jolene M. Molitoris to be Federal Railroad Administrator, and had expressed my desire to introduce her to the Commerce Committee during her confirmation hearing.

As it turned out, I have a prior commitment during Jolene's scheduled hearing tomorrow, and probably will not be able to introduce her. However, as you know, I hold Jolene in the highest regard. She is an experienced executive having served 8 years as deputy director of the Ohio Department of Transportation dealing with railroad issues. Jolene will be an innovative and effective leader in the Government's top railroad post.

I am certain the committee will be pleased with her nomination.

Senator EXON. In just a moment I will call upon you for any statement that you would care to make, but first let me compliment you on a very extensive, well done, and very thorough response which you provided the committee as of today to the series of questions asked in order to form the framework of this committee's review. These questions and responses are accepted into the record at this point without objection.

At this time I would appreciate very much your proceeding with any statement that you care to make, and then we will go to questions.

Ms. MOLITORIS. Thank you, Mr. Chairman. I would like to introduce Congressman Sherrod Brown from Ohio who has come here today to introduce me.

#### STATEMENT OF HON. SHERROD BROWN, U.S. REPRESENTATIVE FROM OHIO

Mr. BROWN. Thank you, Mr. Chairman. It is a pleasure to be here. Those of us in the House are not nearly as busy as you in the Senate, so Senators Glenn and Metzenbaum could not make it but I could today. [Laughter.]

Senator EXON. Representative Brown, I do apologize to you. I had not noticed until just this moment that you were here. Had I realized that you were with us, I would have even recognized you ahead of my colleagues in the Senate. I can say that because they are not here. [Laughter.]

Mr. BROWN. They will find out, Mr. Chairman.

Senator EXON. But we are just delighted to have you come over, and it is very thoughtful of you to come and formally introduce this lady, especially since the two Senators unavoidably could not be here.

Mr. BROWN. Thank you. It is my pleasure to introduce Jolene Molitoris who is both an old friend and someone with whom I have worked for some almost dozen years.

I was formally Ohio Secretary of State from 1983 until 1991, and served as part of the Ohio executive branch with Jolene and was always impressed that she was both visionary and a pragmatist.

She sees the future of rail transportation. She sees how it can contribute to development in this country, how it can contribute to making all of our communities better places to live. At the same time, she is a pragmatist that, Mr. Chairman, you will certainly

appreciate in her dealings with legislative bodies. She worked very well with the State House in Columbus and with the State Senate. She has already told me she plans to show the same kinds of responsiveness to the U.S. Senate and to the U.S. House of Representatives.

She was known in Ohio during those 8 years and for the years before that, before I knew her personally when she was also involved in rail issues, but especially during the 8 years as deputy director of the Ohio Department of Transportation as a person that really worked on building partnerships among management and labor and suppliers and users and ultimate customers in rail transportation, and she will bring that same kind of partnership building to this job, if confirmed as the new Federal Railroad Administrator.

So, it is my pleasure to introduce, as I said, a friend of some dozen years and someone with whom I very much enjoy working, Jolene Molitoris.

Senator EXON. Congressman Brown, before you leave, I think we can expedite this hearing a great deal by just asking a question. After I listened to your excellent testimony and support of the nominee, are you leading us to believe and can you certify to the fact that when confirmed for this post she will do everything that we in the legislative branch want her to do? [Laughter.]

If so, then we can adjourn this hearing. There would be no reason to ask any further questions. [Laughter.]

Mr. BROWN. Mr. Chairman, implicit in my testimony was she would do everything that the House of Representatives wanted her to. [Laughter.]

Senator EXON. Having heard that, we will continue with the hearing. [Laughter.]

#### **STATEMENT OF JOLENE MORITZ MOLITORIS, ADMINISTRATOR-DESIGNATE, FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION**

Ms. MOLITORIS. Mr. Chairman and members of the committee, first I want to thank Congressman Brown for being here with me today and for his introduction. I would also like to thank Senators Glenn and Metzenbaum for the statements they have entered into the record, and I know that they would be here today if they possibly could.

It has been my privilege to work with these dynamic leaders for over 10 years in Ohio. It has been my privilege, and their leadership in Ohio has been an inspiration and a model for me and for so many others, and I am very heartened by the encouragement that they have given me personally.

Mr. Chairman, I am deeply appreciative of the confidence the President has shown in me by nominating me to become Federal Railroad Administrator. For the past 15 years, I have devoted all my energies in my professional life to the support and development of safe, efficient rail freight and rail passenger service.

I believe that rail transportation can be a key component in the economic revitalization of our country. I love this industry and its people of character, dedication, and creativity who make it what it is.

To be asked to serve as the Federal Railroad Administrator would always be an honor, sir, but at this particular time, a nexus for rail transportation, it is both a dream come true for me and a humbling challenge. I am grateful for consideration by you and the committee of my nomination.

Perhaps you know that 1993 represents 100 years of Federal involvement in rail safety. We commemorate the efforts of the Federal Railroad Administration, rail labor, rail operators, suppliers, and consumers everywhere over the last 100 years to increase rail safety. Thankfully, due to the work and commitment of literally thousands of people, 1992 was the safest rail transportation year ever recorded. But there is so much more to do.

If confirmed, I would like to use this 100th anniversary as a starting point to lead the Federal Railroad Administration forward to new initiatives in the next 100 years. We need to substantially reduce deaths and accidents at highway grade crossings and to discourage trespassers that are on properties—in fact, these trespassers could become the largest number of deaths annually. And we must also improve the safety of employees, the people on the ground who make rail transportation work.

I believe that technology can help us. I think that you know that the FRA has incorporated technology into the national inspection plan. It has provided a vast improvement in the ability to focus FRA's limited resources and to focus on the best inspection plan to get us the safest rail transportation possible.

But we need additional ways to make things safe, and one of those I think you are very involved with, Mr. Chairman. Operation Lifesaver is an educational approach to rail safety. And I think if you look at other safety campaigns, seatbelt usage is up to 75-plus percent, the campaigns against smoking, you find that the most effective tools are educational ones.

So, if confirmed I would pledge to work more closely with Operation Lifesaver, and to work with them to design new initiatives to enable our citizens to understand the responsibilities that they have at rail grade crossings, on rail property, and the responsibility that we have to railroad employees.

As you also know, 1993 is a milestone year for rail passenger service because on April 28 Secretary Peña announced the President's and the administration's high-speed rail initiative. This is a milestone for passenger service. This is the first time that the Federal Government has stepped up to the issue of high-speed rail and offered to be a partner. And as you know, Secretary Peña is committed not only at FRA but in all the modal administrations to an intermodal proactive character to all of these administrations.

You mentioned in your opening remarks, Senator, that you looked for an opportunity for the agency, FRA, to step forward and to act on things before required by the Senate or by the Congress. And I can pledge to you, if confirmed, sir, that a proactive character is what the Secretary and the President expect, and with which I am very comfortable.

Last, I want to reiterate the Secretary's commitments to being inclusive in the work of the Federal Railroad Administration. And by that I mean that we have a responsibility to reach out to the whole rail industry. And by definition the whole rail industry in-

cludes the railroad operators, rail labor, safety experts, suppliers, and consumers.

So, I will submit for the record my complete testimony, Mr. Chairman, and look for an opportunity to be responsive to any of your or your committee's questions.

[The prepared statement, biographical data, and questions and answers of Ms. Molitoris follow:]

#### PREPARED STATEMENT OF JOLENE MORITZ MOLITORIS

Good afternoon, Mr. Chairman and members of the Committee.

First, I want to thank Senators Glenn and Metzenbaum and Congressman Brown for being so gracious in introducing me this afternoon. It has been my privilege to work with Senators Glenn and Metzenbaum and Congressman Brown for more than a decade on a wide variety of rail transportation issues. Their leadership for Ohio and the Nation has been an inspiration for me and all Ohioans. We are proud of such dynamic leaders. I am heartened by the encouragement that they have given me.

Mr. Chairman, I appreciate the confidence the President has placed in me by nominating me to serve as Federal Railroad Administrator. For the past fifteen years, my professional life has been devoted to the support and development of safe and effective freight and passenger rail systems. I believe that rail transportation can be a key component in our country's economic revitalization. I love this industry and the people of character, dedication and creativity who make it what it is.

To be asked to serve as Federal Railroad Administrator at any time would be a great honor. To be asked at this critical time in U.S. rail transportation history is both a dream come true and a humbling challenge. I am grateful for your consideration of my nomination today.

In 1993, 100 years after the passage of the Safety Appliance Act, the Federal Railroad Administration along with the entire rail industry—rail labor, railroad operators and suppliers—mark 100 years of effort to increase rail safety. Thankfully, due to the work and commitment of thousands, 1992 was the safest year in rail transportation history. This is an important transportation success story. But there is still much to do. FRA can use this 100-year milestone as an incentive to begin the next hundred years with an aggressive program for the 90's to substantially reduce the remaining deaths and injuries that continue to occur every year. Technology will help us. Using computerized data analysis and allocation formulas, FRA's National Inspection Plan is an example of how technology can help us maximize our resources. However, additional approaches to rail safety must be added to our arsenal in the fight for rail safety. By marshalling the creative genius of all elements of the rail industry, we can and we will increase rail transportation safety.

1993 can also be a milestone for rail passenger service. President Clinton has recognized the importance of investing in high-speed passenger rail service. The High-Speed Rail Initiative package introduced by Secretary Pea on April 28, 1993, is a comprehensive approach to bring high-speed rail to the United States. It recognizes the importance of public/private partnerships to make it happen. It supports investment by companies in the high-tech equipment needed. It incorporates short and long-term investments for both steel wheel and maglev development.

To be successful, FRA must be inclusive in its search for rail transportation solutions that work. The challenges of safety, technology, competitiveness and financing can be met through partnerships with Congress, rail labor, railroad operators, suppliers and consumers. FRA must not work in a vacuum. The demands of the marketplace are evolving at a rapid pace. FRA must learn the lessons of private industry with regard to flexibility and responsiveness. We will look to Congress for counsel and assistance as we look for ways to become a proactive agency. If confirmed, I would feel successful if in the years ahead, FRA would not be thought of as a bureaucracy or simply a regulator but instead as a partner, facilitator and effective advocate for increasing safe rail transportation options throughout the country.

Rail transportation can bring balance to a transportation system whose roads and airports are increasingly congested. State and local transportation planners are beginning to appreciate that rail corridors already in place in their metropolitan areas are important assets for the future. Communities affected by Clean Air Act requirements will soon discover that increased reliance on freight rail and passenger service, coupled with alternative fuel locomotives now under development, can provide affordable answers to crucial environmental problems.

Mr. Chairman, I appreciate the leadership role this Committee has played in preserving the rail option through some very difficult years. You have laid the foundation for the further progress we all need to make together. Freight railroading is a vital and healthy element of our transportation system, and rail passenger service continues to grow. I pledge that, if confirmed, I will work with you to advance the public's interest in the exciting future of rail transportation.

The role of railroads in transportation and the President's increased emphasis on rail has set the tone for FRA in the 90's. By example and exhortation Secretary Peña is seeking to ensure that:

- DOT will be inclusive, rather than limiting access to favored groups;
- DOT will seek partnerships with employees, transportation companies, suppliers, State and local governments, and users of transportation services; and
- DOT will treat transportation as an intermodal system that demands flexibility and creativity by Government and the private sector.

I enthusiastically affirm this proactive intermodal strategy and pledge that, if I am confirmed, I will commit all of my energies to the work of the Secretary's leadership team.

We all know the job will not be easy. Over the next few years, we face the daunting task of maintaining essential programs, promoting new roles for the rail mode, and investing in our transportation infrastructure, even as budgets grow tighter and tighter. I do not underestimate the difficulty of this challenge, but I believe that solutions are both possible and achievable with an empowered FRA team partnered with all elements of the rail community.

I am acutely aware of the important railroad safety responsibilities of the Federal Railroad Administrator. Safety must rank as our first priority. This commitment does not stop with issuing and enforcing railroad safety regulations. We must find ways, in addition to the rulemaking process, to increase safety. In other national safety efforts, such as campaigns to increase seat belt use and nonsmoking, the most effective techniques prove to be educational ones. FRA must work closely with Operation Lifesaver to build on its successful education program motivating safe driving habits at highway-rail grade crossings. We must create a public information plan to stop trespassers whose deaths may soon represent the greatest number of rail fatalities annually. We must join with railroad companies and rail labor to learn new ways of keeping employees safe. Creative safety research and program development can make rail transportation the safest transportation industry in America.

The transportation needs of the future will challenge the United States to produce a seamless system to move goods and people. Environmental and energy conservation goals will drive the use of rail whenever possible. Consequently, both the public and private sectors must work together to make good transportation decisions resulting in intermodal cooperation as the rule rather than the exception. DOT and FRA will work to foster intermodal development to benefit all Americans as customers and citizens.

If confirmed, I recognize the leadership required of the FRA Administrator to ensure a safe, responsive rail freight and passenger system. Although the challenge is great, I am confident that with an empowered FRA team in partnership with Congress, the President, Secretary Peña and all members of the larger rail and transportation community, we can achieve the most safe and competitive transportation system in the world.

Thank you for the opportunity to appear before you today and for the personal courtesy that you have extended to me over the past few weeks. I would be happy to respond to any questions the Committee might have.

#### BIOGRAPHICAL DATA

Name: Molitoris, Jolene Moritz; address: 1290 Northport Circle, Columbus, OH 43235; business address: Federal Railroad Administration, DOT, Washington, DC.

Position to which nominated: Administrator, Federal Railroad Administration.

Date of birth: May 17, 1941; place of birth: Warren, OH.

Marital status: Married; full name of spouse: Edwin David Colwell; names and ages of children: Children from former marriage: Jay Thomas Ritchlin, 26; and Jill Louise Ritchlin, 22. Children of Edwin David Colwell: Camilla C. Colwell, 28; and Capitola C. Hilyard, 30.

Education: St. Mary High School, Warren, OH, 1955-59; College of New Rochelle, New Rochelle, NY, 1959-61; Catholic University of America, Washington, DC, 1961-63, BA; and Western Reserve University, Cleveland, OH (has since merged with Case, now called Case Western Reserve), 1963-64, MA.

Employment: 4/93-present, DOT/Federal Railroad Administration, Intermittent Consultant; 1/92-4/93, The Literacy Initiative, Columbus, OH, Executive Director; 4/91-1/92, Alpha Innovations Systems, Columbus, OH, CEO; 2/83-1/91, Ohio Department of Transportation, Columbus, OH, Deputy Director; 10/77-2/83, Ohio Rail Transportation Authority, Columbus, OH, Executive Director (1982-83), Deputy Director (1980-82); 1966-67, Whitehall Public Schools, Columbus, OH, Substitute Teacher; 1965-66, Reynolds Junior High School, Columbus, OH, 8th Grade English Teacher; and 1964-65, Canai Winchester High School, Columbus, OH, Speech/English Teacher.

Government experience: Ohio Rail Transportation Authority from 1977-83—worked with FRA, State of Ohio, other States in the region and throughout the country and many city and county governments on freight and passenger rail matters; and Ohio Department of Transportation, 1983-91—same as above.

Political affiliations: Ohio Democratic Party: \$200 in 1993, \$175 in 1990, \$300 in 1987, and \$150 in 1984; and Governor's Club: \$1,000 in 1987, \$1,000 in 1986, \$1,000 in 1985, \$1,000 in 1984, and \$1,000 in 1983.

Memberships: Women's Transportation Seminar; Ohio Association of Rail Passengers; and High Speed Rail/Maglev Association—became a member in 1985, was program chairman of the May 1989 convention in Cleveland, elected to board on November 9, 1989, elected Treasurer on November 9, 1990, reelected Treasurer on November 25, 1991, elected Vice President on November 13, 1992, resigned position of Vice President and Board Member in April 1993.

Honors and awards: High Speed Rail Association: 1992, President's Award for Outstanding Achievement, and 1989, President's Award for Outstanding Achievement; and Teaching fellowship at Western Reserve University, 1963-64.

Published writings: I have written an article published in 1991 for the Ohio County Commissioners magazine about the role of Port Authorities and County Commissioners in purchase of rail property and management of local short line railroads.

#### QUESTIONS ASKED BY THE COMMITTEE AND ANSWERS THERETO BY MS. MOLITORIS

*Question 1.* Please outline for the Committee specific professional experiences and accomplishments which you believe qualify you to serve as Administrator of the Federal Railroad Administration (FRA).

Answer. Over the past 15 years, it has been my privilege to serve the State of Ohio in several rail transportation positions. I began my rail transportation career in 1977 as an assistant liaison officer with the Ohio Rail Transportation Authority and during the next 6 years was promoted until I became Executive Director in 1982. This state agency was responsible for Ohio's rail freight and passenger programs and gave me an invaluable opportunity to work with a wide variety of rail freight and passenger transportation entities and to learn from many rail transportation professionals.

In 1983, Governor Richard Celeste recreated the Ohio Rail Transportation Authority into a new Rail Division of the Ohio Department of Transportation and appointed me to head the new Division as Deputy Director for Rail. Over the next 8 years, Ohio developed a fine team of rail professionals plus a successful cooperative relationship with the highway, transit, air and water divisions.

The Rail Division was a strong advocate for safe rail transportation in Ohio and the Nation. We built partnerships with rail labor, rail operating companies, Federal, state and local elected officials, economic development entities such as chambers of commerce, and many rail-dependent companies to raise the visibility of rail transportation and its importance to the economy.

With the help of a supportive state legislature, we passed legislation creating the Rail Industrial Development Fund to provide a small but ongoing source of funding to leverage Federal, local and private dollars to attract rail-dependent companies to Ohio and encourage rail transportation investment.

Safety was a fundamental element of Ohio's rail program. I served as Chair of Operation Lifesaver in Ohio, championed the Buckeye Crossbuck demonstration project and am proud of the work the Rail Division continues to accomplish in cooperation with the Federal Railroad Administration and the Federal Highway Administration to close redundant crossings and promote rail safety in Ohio.

With regard to high speed rail transportation, Ohio was the first state to develop a program to plan for high speed rail transportation. Fortunately, I was there at the beginning and had the opportunity to work on all facets of this exciting new technology with rail experts all over the United States and indeed around the world.

It has been my privilege to work with rail professionals who have been generous mentors and demanding teachers. I am grateful to so many who have given me the opportunity to work in this important industry.

*Question 2.* If confirmed, what do you hope to accomplish as Administrator? What will be your highest priorities and goals?

Answer. If confirmed as Administrator, I look forward to working with Secretary Peña and the other Modal Administrators to bring rail transportation to its full potential as an essential part of the most safe, efficient, effective and responsive transportation system in the world. Rail freight and passenger transportation is the one mode with available capacity. It can be used in U.S. efforts to revitalize our economy, increase global competitiveness, provide defense conversion opportunities while being kind to the environment in the process.

A top priority will be safety because this is the foundation upon which all rail transportation must be built. The FRA must continually ask the question, "What can we do to make rail transportation safer?" 1992 was the safest year for rail transportation on record. And yet we know we must do better. I believe that we must establish stronger partnerships with Congress, railroad operators, rail labor, all constituent groups at state and local levels and the public at large to use the regulatory, technology and education tools we have and develop even more effective ones to save lives and prevent injury.

Another high priority will be to enhance the viability and competitiveness of U.S. freight and passenger systems. Using rail to move goods and people must be an essential part of a vital U.S. intermodal transportation system. Special attention must be given to Amtrak and high speed rail development. The President and Secretary Pen have as a priority the development of a high speed ground transportation system in the United States. The Department's proposed High Speed Rail Development Act of 1993, HR 1919 is moving through the House and will be marked up soon. I hope this Committee will move with dispatch on its bill as well. The Initiative provides a program of partnerships to encourage investment packages of private, state, local and Federal money to bring high speed rail to the United States. FRA will be a partner with states and regions. The High-Speed Rail Initiative is a solid proposal. In addition, the High Speed Initiative includes funding to encourage technology development, U.S. research and manufacturing needed for this important industry. I urge timely action by the Committee and the Senate version of this bill, S. 839.

Finally, I look forward to nurturing and enhancing the effectiveness of FRA's most valuable resource, its committed, hardworking, expert employees. I want to use the latest proven organizational, management and communication techniques to help FRA's team become empowered and able to respond to the demands of the 90's.

*Question 3.* What is your view concerning the FRA's progress in implementing the Rail Safety Enforcement and Review Act of 1992? What challenges remain, and do you anticipate meeting all statutory deadlines established by the Act?

Answer. FRA has already issued one required notice of proposed rulemaking (Remedial Action Reporting) and has established schedules and activities to fulfill the Act as required. FRA has held a number of public meetings and workshops on the other rules, and begun preparation of the various required studies and reports. If confirmed, I will be working with great diligence to meet the remaining statutory deadlines.

I cannot promise 100 percent compliance with statutory deadlines given the many projects that FRA has underway, the small size of our technical staff and the clearance processes that any rulemaking process must negotiate. However, I think the agency is showing genuine effort and will do well overall on the challenge you have set before it. If I am confirmed, that will be among my top priorities.

*Question 4.* What is the effectiveness of the National Inspection Plan initiated by your predecessor? Do you believe that FRA has a sufficient number of safety inspectors to handle the territories assigned? What changes in the area of inspection and enforcement, if any, do you intend to make?

Answer. On first impression, I believe the NIP model provides a sound framework for allocating our routine inspection time. Before NIP, no national inspection plan existed. Each region had its own plan. Inspectors had limited or no data to determine where they should be inspecting. Inspection plans were often limited to an inspector's personal judgment.

With the NIP we are using today, data is being used from accident, inspection, casualties and way bill files in a complex allocation model. The model findings are used by field managers, with inspectors, to plan inspection goals for the year, which can be modified based on unexpected events that occur during the year. This process allocates inspector and inspection time to locations of greatest concern as well as assures that all railroads are inspected. Railroads with less of a safety concern are

inspected less than those with a history of greater safety concern. However, the agency has already made adjustments for the 1993 NIP.

FRA has learned a great deal from its model during the first year which provided guidance on better ways to allocate inspectors inspection time. As a result, revisions to the model were made to more effectively use defect ratio data to identify locations of greatest concern, distribution of inspection hours between large and small railroads to assure small railroads are not overlooked, and maximize inspection of Amtrak operations to locations where inspections will be most effective.

This experience caused FRA to conclude that it is important for headquarters to constantly review its model. We can then assure that regional staff is getting the best guidance possible on where to inspect. The outcome is a dynamic model, not a static model.

Of course, general targets for inspection coverage are just part of the picture. FRA safety management has set a goal to make better use of our data that bears on safety risk. Accident, inspection, casualty, and way bill data allows us to focus on select railroads requiring special attention because their compliance record is poor. The objective is to change the way these railroads operate.

The President's Budget requests additional resources for inspector staffing (16 positions and 8 FTEs) related to new programs (grade crossing corridor improvement/closures and inspection, testing and maintenance of automated warning devices). FRA is currently attempting to develop a model to quantify as best we are able the number of inspectors needed to adequately enforce Federal safety regulations. This process has been difficult since our data is limited. We are resolving this by gathering data by discipline on railroad operations nationwide. Upon completion of this work, FRA will be able to better quantify its resource needs compared to today's standard. The process will require approximately two more years to fully develop. Complexity of the hazardous materials discipline had slowed the development of the model because it is relevant to all disciplines.

**Question 5.** Each year, roughly 500 to 550 people die while trespassing on railroad property. If confirmed as Administrator, how will you work with the railroads and others to address this problem?

**Answer.** This is the toughest issue we face in the safety arena, because it is really a combined issue of homelessness, lax supervision of children, limited law enforcement resources and attention, mixed messages from the media and many other factors.

I would continue to work through Operation Lifesaver and direct contacts with the public to raise awareness of this risk.

Finally, I think everyone realizes we need new strategies to address the problem. I do not have answers today, but I am prepared to work on it, particularly because within two or three years, this may be the single greatest cause of death associated with railroad operations.

**Question 6.** What FRA activities do you believe best promote grade crossing safety? What cooperative activities on grade crossing safety will you pursue with the Federal Highway Administration and the National Highway Traffic Safety Administration? How will you work to help resolve overlapping agency jurisdiction in this area?

**Answer.** Engineering, education, enforcement and elimination remain the central themes of DOT's grade crossing safety program.

Certainly we need to reduce the number of crossings, thereby allowing us to focus our resources on those that remain. Those resources include both law enforcement and funds for improving warning devices, pavement markings, crossing surfaces, illumination, and other safety features.

I plan to deploy a lean, effective cadre of grade crossing safety specialists—at least one in every FRA region. President Clinton's 1994 Budget requests funds for this purpose. FRA will put these specialists to work with the Federal Highway Administration district offices and the State DOTs to focus on main lines that carry a high volume of freight or passenger traffic at elevated speeds. By closing some crossings and improving those that remain, we can save lives as well as dollars that are badly needed elsewhere. Finally, each State must enact meaningful authority for a state-level body to order crossing closures and scrutinize proposals for opening new crossings. Fortunately, the National Conference of State Railway Officials has undertaken to draft a model state law to confer this authority.

We need to continue our commitment to Operation Lifesaver. Education and awareness will always be the foundation of public safety. We need to continue to elicit the help of the law enforcement community.

In addition, FRA needs to issue the mandated rules on periodic inspection, testing and maintenance of automated grade crossing warning devices; and railroads need to ensure that they comply. Railroads are already installing crossing lights (ditch

lights) on their locomotives. FRA needs to complete its research into alerting lights this year, as required by law, and move toward specific regulatory requirements. Next, FRA needs to finish its ongoing research on reflectorization of rolling stock and take any action indicated by the results.

Private crossings are an issue FRA cannot ignore, because no other public body takes responsibility. This Thursday in St. Louis the agency will be conducting an important public meeting on draft guidelines for private crossing safety. Whether final action takes the form of guidelines or regulations or recommended practices, we need to press this issue. Users of most private crossings are a daily threat to themselves and the safety of train movements.

*Question 7.* There are roughly 70,000 active grade crossings (crossings with automated warning devices) in the United States. How will you enforce FRA's forthcoming grade-crossing inspection and maintenance regulations?

*Answer.* FRA's Signal and Train Control inspectors are well versed in automated warning device technology, and they will be primarily responsible for normal surveillance activity.

The President's 1994 Budget requests an additional 8 positions (4 FTEs) for this discipline in recognition of the additional workload the new regulations will entail.

In addition, 20 of 28 States participating in the National railroad safety program have existing grade crossing warning device programs. Eighteen (18) of those States have indicated interest in joining the State Participation Program and providing inspection resources. FRA is presently beginning an outreach effort to the States not already in the program.

FRA will also review carrier management of their own periodic inspection programs, monitor activation failure reports and respond to specific complaints lodged by individual citizens and labor organizations.

*Question 8.* Your predecessor established the goal of closing 25 percent of all public grade crossings by the end of the century. Do you support this goal? If so, how would you accomplish it, if confirmed as Administrator. In addition, will you use, or encourage the use of, Intermodal Surface Transportation Efficiency Act funds to accomplish this purpose?

*Answer.* I think it's a splendid objective, and, if confirmed, I want to work to accomplish it.

To do it, we would need three things:

(1) A strategy to focus on main line segments with heavy traffic and high accident risk; closure as many crossings as possible while improving the remainder with ISTEA funds.

(2) A commitment from the States that would be reflected by enactment of meaningful State laws conferring on a single State-level body the authority to close unneeded or unusually risky crossings. NCSRO is working on a model State law.

(3) Resources from the rail side of the highway-rail equation to make investments in corridor improvement programs; they need FRA's help and encouragement.

I have been reminded that, by law, Federal highway-rail crossing dollars can be spent on a million dollar grade separation but not a \$5,000 bonus to the local community for closure. Some local communities have responded very favorably to modest railroad offered "Bonuses" of this magnitude as an incentive to close crossings. By law Federal monies must be spent on material and labor only. If confirmed, I will work on this matter with Administrator Slater.

*Question 9.* The National Academy of Sciences has recommended one or more pilot projects to establish an automated emergency response information system to track hazardous materials shipments. The Academy recommends that the first pilot test focus on rail movement. What is your view of this proposal?

*Answer.* Prior to issuance of this report, FRA and railroads operating in the Houston area had jointly initiated a demonstration project to link the computer systems of the Port Terminal Railroad with local emergency responders, so that a fully accessible source of data would be available in the event of a hazardous material incident. The project is called the Houston Cooperative Emergency Planning Project, and is jointly funded by FRA and Houston's Port Terminal Railroad.

This system, if successfully demonstrated, would provide a backup to hazardous materials information carried by the train crew and placards on hazardous materials cars and would also help first responders to all kinds of rail accidents make decisions that may protect lives and property.

Railroads have always led the way with respect to hazardous materials information systems, and we believe that this project will fulfill the need identified by the NAS report. However, I want to caution that the genius of this approach is that it uses information already required for transportation business purposes and regulatory compliance. No massive new data base is required. Instead, the concept will properly utilize (1) the increasingly detailed and increasingly accurate freight car

inventory and location data produced between railroads and shippers; (2) car status information from railroads that are implementing a work order reporting system for keeping track of cars in freight yards; (3) increasingly timely interline data exchanges that we believe will lead to integrated service management.

*Question 10.* In the last Congress, concern was expressed over the FRA's progress in completing two pending rulemakings addressing aspects of railroad tank car safety. What is the status of those rulemakings and, if you are confirmed as Administrator, when will these proceedings be completed?

Answer. FRA staff assures me that both rulemakings are the subject of active and very intensive effort. The draft NPRM for HM-201 is under review at RSPA and should be issued before the end of the fiscal year, as required by the DOT Appropriations Act. If confirmed, I would require frequent reports on the status of HM-175A, with the objective of ensuring that an NPRM is issued in that proceeding before the end of September, as well.

*Question 11.* The FRA and the Research and Special Projects Administration have overlapping jurisdiction in a number of areas related to hazardous materials transportation safety. In your view, has this been a problem, and if so, how will you resolve it if confirmed as Administrator?

Answer. I have not had the opportunity to review that question in any detail, but FRA's Associate Administrator for Safety advises me that the agencies' areas of jurisdiction are complementary and that organizational arrangements are generally appropriate. RSPA's Acting Administrator, Rose McMurray, testified recently about the benefits of the cooperation between RSPA and FRA with regard to the Houston Hazmat Demonstration Project. She is very encourage about similar joint efforts in the future.

I think it is important to note that hazardous materials move in international commerce and often through multiple modes of transportation. RSPA has the job of ensuring that regulations are practical and compatible across modal lines. Most important, the RSPA and FRA Administrators report to the same Secretary of Transportation, and that Secretary is already working to ensure that the operating administrations work together, rather than at cross purposes.

*Question 12.* Please describe your general philosophy with respect to economic regulation of the railroad industry. Do you believe that the Staggers Rail Act has been effective?

Answer. In most situations, railroads today face substantial competition—from trucks, from barges, and from other railroads. Regulation must allow the rail industry to meet that competition, through flexible pricing, innovative marketing, and cost-effective downsizing—where necessary. However, where shippers are not protected by competition, regulation must be available to ensure that they are not abused. I believe the Staggers Act has been effective in maintaining this balance.

Shippers have been prime beneficiaries. Rail rates declined 2.1 percent per year in real terms between 1990 and 1992, and have dropped 1.5 percent per year since 1980, compared with a yearly increase of 2.9 percent in the 5 years before staggers. As a consequence, rail traffic levels have increased—dramatically, in some cases. Intermodal traffic has doubled since 1981.

The industry's safety record has improved significantly. Accidents have dropped more than 70 percent since the late 1970's, and the frequency of accidents per train-mile is down more than 60 percent. Much of this can be attributed to increased investment in track and equipment; between 1980 and 1991, the industry invested \$145 billion in plant and equipment.

The pervasiveness of the competition faced by the railroads is indicated by the fact that more than 75 percent of all rail traffic is not subject to maximum rate regulation. This is because competition has kept rates below the statutory threshold for ICC authority, or because the ICC has exempted the traffic altogether, after finding that shippers would not be harmed.

However, shippers without alternatives remain protected. The ICC retains authority over rates where the shipment's rate/variable cost ratio is above a certain level, and competition cannot protect the shipper from a rail monopoly. And there is also protection for small communities facing loss of service and jobs because competition and the economy may have forced a major railroad to rationalize its plant. The Staggers Act made it easier to start new small railroads. Of the almost 500 independently-owned small and regional railroads (not part of a Class I system), over 50 percent were started after 1980. These newly-formed railroads employ almost 9,000 workers, preserving many of the jobs that would have been lost had service been abandoned altogether.

Finally, there have been no major bankruptcies since the Act, even in the recession of the early 1980's. Industry return on investment has improved greatly since the 1970's, but railroads as a group still do not meet the ICC's target for revenue

adequacy. This is the benchmark used by the ICC to determine if railroads are earning their cost of capital—the rate at which they must compete for money in the market. The ICC's revenue adequacy target for 1992 was 11.4 percent. In contrast, the Class I freight railroads' average return on investment in 1992 was an estimated 7.2 percent. (excluding special "one-time" charges). This means that, even with the reforms of the Staggers Act, railroads as an industry are not fully profitable. Competitive pressures, as well as remaining regulatory and institutional constraints, have meant that the carriers must pass on to shippers much of the cost-savings they have achieved under the Staggers Act, rather than retain the productivity gains for themselves.

*Question 13.* As Deputy Director of the Ohio Department of Transportation, you were involved in the creation of 13 short line railroads. What was your specific involvement and role in this area? What is your view of the applicability of labor protection to transactions of this nature?

*Answer.* During my tenure as Deputy Director of Rail Transportation for the Ohio Department of Transportation, Ohio lost almost 20 percent of its Class I service in the process of Class I rationalization permitted under Staggers. As you know, Staggers dramatically affected rail transportation and the Rail Division was challenged to develop a strategy to cope with a rapidly evolving rail transportation system in Ohio.

The goal was clear: retain as much rail transportation and as many lines as possible. The strategy had several parts:

(a) Promote expansion of existing rail-dependent companies and recruit new ones at locations on Class I rail lines. The idea was to increase rail business wherever possible so that abandonment would not be a good economic choice. We worked with the Department of Development to increase computer data base information to help market rail transportation opportunities.

(b) ODOT/Rail developed partnerships with rail labor, the operating railroads, state and local officials to present "success story" rail seminars around the state about the importance of rail transportation, how to keep it and increase it. We encouraged communities and companies to come to the Rail Division for help at the earliest signs of potential loss of service. We worked with all parties using all available tools trying to change the economics and keep Class I's on the line. In fact, we called a rarely used section 401 conference using FRA's good offices to challenge Class I's to work with us and each other to keep Class I's in Eastern Ohio.

(c) We used every tool available to us plus leverage from the Governor's office and the Congress to keep Class I railroads on every line. But, in some cases, we were not successful. As a last resort, when a line was abandoned, AND ONLY THEN, would we agree to use LRSA/LRFA funds and state money to help communities retain rail service by setting up Port Authorities, buying lines from Class I's and setting up short line service. It was a fundamental responsibility for the Rail Division to protect rail jobs and rail-dependent business jobs in every way possible. In fact, the biggest investment in a short line project ever made by the Rail Division was with the Akron Barberton Belt Railroad, a unionized short line. The importance of retention of rail service for small communities such as Jackson, Ohio, was clear: if Jackson lost its rail service, almost 1,000 jobs (most of the working men and women of Jackson—total population 6,130) would be lost from the companies that would leave. Strict policies were set to guide the Rail Division's actions with regard to shortlines: 1) no involvement until a line was abandoned; 2) prevailing wage was required; and 3) advice and assistance was sought from a rail labor advisory committee before action was taken.

The applicability of labor protection to short line sales is governed by the Interstate Commerce Act. I would like to work with rail labor, Class I's and shortlines to develop ways to enhance the attractiveness of shortline development for rail labor in those cases when Class I operations cannot be retained.

*Question 14.* In the area of railroad labor relations, will you, if confirmed as Administrator, advocate that the FRA take an active role in any reassessment of rail labor laws now in force? What is your view of the effectiveness of the Railway Labor Act? Do you believe that the FRA or the Department of Transportation (DOT) should intervene before the Interstate Commerce Commission in proceedings addressing railroad labor protection and similar issues in order to represent the Administration's interests in this area?

*Answer.* I will address each part of the question in order.

#### *Reassessment of Labor Laws*

I do not anticipate FRA taking an active role in a reassessment of the rail labor laws. However, to the extent that railroads, labor and management jointly, identify

an area where change may have economic or social benefits, then FRA could facilitate review or examination of the alternatives.

#### *Effectiveness of Railway Labor Act*

Administration of the Railway Labor Act is the responsibility of the National Mediation Board, an independent agency. The Mediation Board estimates that 98 percent of disputes under its jurisdiction are settled peacefully; this includes both railroad and airline cases.

The Act was designed to prevent interruptions to interstate commerce. The Act obligates the parties to maintain the status quo, unless a settlement is reached, during an extended process of negotiation, mediation, offer of binding arbitration, cooling-off periods and, in major cases, investigation by a Presidential Emergency Board.

In most cases the Railway Labor Act has proven effective. I am committed to working with railroads and rail labor to use FRA's resources to assist problem solving in any way appropriate and possible.

#### *ICC Labor Protection Cases*

The present DOT policy is to participate in major proceedings, when a significant transportation issue is addressed, and not to participate in individual cases that will not impact or modify existing transportation policy. This appears to me to be an appropriate policy.

*Question 15.* What do you see as Amtrak's mission as part of the national transportation system? What funding levels do you believe would be adequate to sustain Amtrak?

*Answer.* Amtrak is an important element of the Nation's intercity passenger transportation system. Though Amtrak carries a very small percentage of intercity trips nationwide, its role is significant in the high density corridors it serves; it serves a number of areas which have neither air nor bus service, and it ties together the different parts of the continental U.S.

Amtrak's funding requirements will necessarily consider the railroad's operating strategy and available Federal resources. One of the first items which Amtrak's new Board of Directors must address is a strategy for attaining operating self-sufficiency, when that goal is attainable, and what resources are needed to get there. The answers to those questions as well as the budget constraints which the Administration will face would govern our future budget recommendations for Amtrak. I see Amtrak's operating budget resuming its downward trend in FY 1995, but Amtrak will require substantial capital funding for the next five years, including funding to complete the Northeast Corridor high speed rail project.

*Question 16.* What issues do you believe will be paramount when Congress next considers the reauthorization of Amtrak in 1994?

*Answer.* A paramount issue for the next reauthorization of Amtrak will be providing an appropriate level of capital funding for the future and operating funds for a transition to operating self-sufficiency. Capital funding over the last 12 years has often been less than 20 percent of Amtrak's annual depreciation. As a result, Amtrak's equipment and facilities are not up to what is required to reduce operating subsidies and ultimately reach self-sufficiency.

The freight railroads have expressed interest in (1) reopening the issue of Amtrak's statutory right under section 402 of the Rail Passenger Service Act to access to railroad lines and facilities, (2) reopening the issue of compensation they receive for permitting Amtrak operations over their lines, and (3) liability for passenger train accidents. These issues are critical to Amtrak's future.

Another important issue concerns changes in the formula for 403(b) contributions by states for additional service they want.

*Question 17.* What significant lessons have you drawn from your previous experience in high-speed ground transportation, and how will you apply this knowledge in your tenure as Administrator, if confirmed?

*Answer.* I have learned that designing and implementing a high speed rail project is complex and challenging. But the success of foreign development of high speed rail underscores the worthwhile transportation and economic results of this mode. The grass roots high speed rail development work of so many states is compelling evidence of the deep interest and desire around the country for a high speed rail option for U.S. travelers. However, the financing barriers have been too difficult for states to conquer alone. Consequently, the importance of the President's High Speed Rail Initiative and his inclusion in the Administration's tax package of the tax-exempt bond provision to remove state cap limitations cannot be overemphasized. Finally, I believe we have learned that including a broad range of constituencies in planning high speed rail corridors is essential to success. Those efforts that tried

to short cut the people or process have not survived. As Administrator, if confirmed, I am committed to working closely with Congress, states, communities and regions on their efforts to invest in high speed rail. I believe the Federal Railroad Administration, with tools provided by the Congress, can be an effective partner in this important transportation initiative of the '90's.

**Question 18.** At its recent hearing on S. 839, the Highspeed Rail Development Act of 1993, the Committee heard testimony that the funds requested for corridor development must be focused in, at most, several corridors in order to effect significant reductions in rail traveltimes. What is your response to this assertion? If confirmed as Administrator, how will you balance the desire to encourage interest nationally in high-speed ground transportation with the need to ensure that Federal funds appropriate for high-speed rail are not too widely dispersed?

Answer. The initiative is with the States. Federal high-speed rail funds will supplement State, local and private sector funding. If confirmed, I will quickly focus on corridor proposals that are sufficiently attractive to enable sponsors to obtain at least 50 percent of -project costs from State, local and private sources. FRA reviews will emphasize the extent of State, local and private sector commitment, and financial viability. As a result of an objective review process, I expect to fund the most meritorious corridors and projects—those that will provide the greatest return on our investment.

**Question 19.** representatives of the freight railroad industry have suggested that section 402 of the Rail Passenger Service Act should not apply to high-speed rail service funded under the Administration's high-speed rail proposal. What is your response to this assertion?

Answer. Under the Rail Passenger Service Act, the United State relieved freight railroads of their common carrier obligations to provide intercity rail passenger service upon contracting with Amtrak to provide that service instead. Of course, to provide the service, Amtrak had to have access to the railroads' lines. section 402(a) of the Rail Passenger service Act gives Amtrak a statutory right of access to railroad tracks and other facilities, subject to a determination of fair and equitable compensation by the ICC if the parties cannot agree. Section 402(f) permits Amtrak to seek an order from the Secretary of Transportation setting maximum permissible speeds if a railroad refuses to permit accelerated speeds by Amtrak trains.

Section 402 is the only existing means of assuring that at least one operator can provide high-speed rail service over the lines of a freight railroad. A freight railroad is otherwise free to refuse to permit high-speed rail passenger service to be operated over its property. That is reason enough for section 402 to continue to apply to high-speed rail service funded under the Administration's high-speed rail proposal.

Moreover, any change in the relationship between the freight railroads and Amtrak, as established by the Rail Passenger Service Act, could have significant implications for the future of intercity rail passenger service in this country. Proposals for such changes should be addressed as part of a comprehensive debate over the role of Amtrak in the Nation's transportation system. That debate can best be conducted in the context of the reauthorization of the Rail Passenger Service Act which is scheduled for next year.

**Question 20.** Concerns have been raised regarding the potential allocation of liability in the provision of new high-speed rail services. What is your view of the liability issue, and what role do you believe that the federal government should play, if any, in addressing this question?

Answer. This is an important issue, and its resolution is essential to moving high-speed' rail proposals forward. While we want to be helpful in resolving this problem, the issue is still under review, and a definitive Administration position has not yet been formulated. I look forward to work with the AAR and the railroad industry to resolve this critical issue.

**Question 21.** When will DOT release the final report of the National Maglev Initiative? When will the underlying feasibility studies submitted pursuant to the system concept design and broad agency announcement requests be released publicly?

Answer. The NMI final report is in the final review process, and will be printed and released in August. A compendium of all the reports from the system concept definition contracts and the reports from 24 of the 27 technology assessment contracts have been released to the National Technical Information Service of the Department of Commerce for public availability. The remaining three reports will be completed within the next three months. Contracts awarded during FY 1993 will be complete over the next year with reports published as they are completed.

**Question 22.** Please provide your views on each of the following proposals designed to advance high-speed ground transportation systems in the United States: (a) further access to tax-exempt funding; (b) Federal loan guarantees for high-speed systems; and (c) creation of a Passenger Rail Trust Fund.

**Answer.** Over the long term, I believe we should be open to exploring the merits of all potential funding sources for high-speed ground transportation. It is important that States, localities and private sector interests have the maximum flexibility to make the best funding decisions in considering competing modal improvements.

With regard to the specific proposals:

—Tax-exempt financing—I support the availability of tax-exempt financing for high-speed rail equivalent to that for other public works projects. This is part of the Clinton Administration's initiative, which focuses on grants to public agencies.

—Loan guarantee—ISTEA amended the 4-R Act to permit the loan guarantee provision to help build high speed rail. Before this provision can be used the Appropriations Committee must establish a set-aside in the budget. As U.S. high speed projects develop, a compelling argument from State coalitions could be made to Congress as to the need for such loan guarantees. Such a program has been a successful tool in building high speed rail around the world.

—A Rail Passenger Trust Fund—if, at some future time, a decision is reached that a dedicated source of Federal funding is needed for rail passenger service, a trust fund should be considered. I would suggest that any such consideration also explore a broad-based transportation trust fund which would provide States with maximum flexibility in funding decisions.

**Senator EXON.** I appreciate that very much, and without objection your full statement is included in the record at this point.

Ms. Molitoris, we very much appreciate your frankness and ability to be up front. We are impressed with the credentials that you have, as I indicated earlier.

At this time, I am very pleased to recognize my friend and colleague from South Dakota who has joined us now—the Senator is the ranking Republican here today. Senator Pressler, I recognize you for whatever comments you have or whatever questions you have at this time.

#### OPENING STATEMENT OF SENATOR PRESSLER

**Senator PRESSLER.** Well, you have given me a promotion but I will take it. Thank you very much, my friend and neighbor, the Senator from Nebraska.

And I shall be very brief except to say that I welcome you here, and I am going to have several written questions that I am working on. And, Mr. Chairman, I wondered, could we have until noon tomorrow or until tonight to get those questions in? I do not want to hold anything up.

**Senator EXON.** I had not decided. I would be glad to hold those up until noon tomorrow. Would that be satisfactory?

**Senator PRESSLER.** We have the Dakota, Minnesota and Eastern Railroad and there is a potential—as I understand it the Union Pacific may buy the Chicago and Northwest, and this may affect the DM&E. Do you know anything about that?

Ms. MOLITORIS. I do not know about their negotiations, Senator.

**Senator PRESSLER.** OK, well, as it boils down, to make a long story short, the short line railroads are very important to my State of South Dakota. And we have the Dakota, Minnesota and Eastern Railroad, plus we have the Burlington Northern, and we have lots of other railroads there. But the one that goes across the State that has been struggling is the DM&E, and we have the State contract with the Burlington Northern that hauls the coal, and they are in pretty healthy shape I believe.

But we will be having several questions because there is a synergistic relationship between the small short lines and the regional railroads and so forth. So, from my point of view I am very con-

cerned about short line railroads, and I am very concerned about the large railroads becoming predatory. They should not. There should be a synergistic relationship.

I will ask one question and then I will submit the rest of my questions for the record, if that is agreeable.

Senator EXON. Certainly.

Senator PRESSLER. The railroad industry is saddled with a host of antiquated Federal laws that treat this industry differently than other industries in the country. Now, some say that these include the Federal Employer Liability Act, and some say the Railroad Retirement Act. Laws like these are supposedly imposed on railroads that are not imposed upon their direct intermodal competitors. Is that true? And what is your view of these things, and how can we reduce unnecessary costs or difference because we want to be fair to retirees, we want to be fair to people who have a lawsuit to bring?

I guess let us start with those two, Federal Employees Liability Act and Federal Retirement Act as they affect short line railroad and as they affect the fairness to people.

Ms. MOLITORIS. Senator Pressler, I appreciate your concern, and I did understand you have been very helpful with regard to local rail freight assistance legislation and budgetary concerns, and if you have an opportunity to review my record you will learn that when in the State of Ohio, after efforts to retain class I service failed, we did facilitate and work together with local communities with regard to short line and regional railroads.

I think the whole issue of rail transportation is a very complex mosaic, and I think your mention of fairness is a very important concern. The Federal Railroad Administration must look at all sides of the picture. The rail transportation network needs to be competitive to be a full partner in the transportation network of this country. And Secretary Peña has urged us and exhorts us regularly to think intermodally. And so the synergistic relationship that you are talking about applies to railroads as well as to other forms of transportation.

Certainly, in the State of Ohio where we lost approximately 20 percent of our class I lines, the ability for very small and often rural communities to survive depended on their ability to retain service.

I think it is very important that the Federal Railroad Administration develop a very responsive kind of relationship with all elements of the rail industry because, as you note, the competitiveness of the operating railroads, as well as the fairness issues regarding the protection required by rail labor, are both very important issues. And to whatever extent the Federal Railroad Administration and administrator can facilitate what is best for all parties, and especially the health of the rail industry and the competitive nature of that industry, that would be what we should do.

Senator PRESSLER. Just one more question. Are you aware of the Rural Rail Infrastructure Act? It is S. 731 which I introduced earlier this year to improve both the LRFA and the section 511 loan guarantee program. Have you had a chance to take a look at this bill, and if so, what is your reaction to it? And if you have not, you may respond in writing.

Ms. MOLITORIS. Senator Pressler, I would be pleased to respond for the record in writing.

I do know a little about the bill. I know you have asked for a significant funding level for the local rail freight service assistance, and as I said, that can be very, very helpful to small communities and especially rural communities where population centers are small. But the realities are that rail service becomes a foundation for the economic health of those communities.

Senator PRESSLER. Now, do you think you could give us some passenger rail service in South Dakota? [Laughter.]

Senator EXON. You should check with counsel on that. [Laughter.]

Ms. MOLITORIS. Senator Exxon, Senator Pressler, certainly, as rail transportation steps forward to take its full partnership as a part of the intermodal transportation system, the investment level that the Congress decides to put into rail transportation will be a very key factor on the level of service we can provide in areas where revenues might be low.

Senator PRESSLER. Finally, any comments you would have on the administration's failure to put funds in for local rail freight assistance program in the section 511 loan guarantees. Would you join us in an effort to restore some of those funds?

Ms. MOLITORIS. Senator Pressler, of course, this budget was put together and offered before I arrived as a special advisor to Secretary Peña. If you look at my record, I think you will learn that it was always a very important part of the mosaic of opportunities we try to provide for anyone who needed rail transportation.

So, if confirmed, I would be very looking forward to working with Secretary Peña on that kind of funding.

Senator PRESSLER. Thank you very much. Thank you very much, Mr. Chairman. If you would leave the record open we would have some more technical questions on who is buying whom.

Senator EXON. We will leave the record open till noon tomorrow, which I think should be adequate time.

Senator PRESSLER. And we will respond very quickly.

Senator EXON. I would simply say in answer to your earlier question with regard to the nominee's feelings on pending railroad matters, certainly, we all know that Union Pacific has purchased some of the shares of the Chicago and Northwestern. I can understand the concern of South Dakota and the fact that you have critical needs up there that are important. I congratulate the State of South Dakota on the very good job they have done with the short lines up there.

I believe from the knowledge that I have of the nominee's background that she is probably one of the real experts on short-line railroads, and how those should operate. Certainly, the Senator from South Dakota knows that the subcommittee and the full committee have always been interested in short lines. The short-line railroads obviously have played a very key part in maintaining rail service that would otherwise be gone.

At the same time, we have shown some resistance from time to time for the easy out of simply creating a short line if there is no real reason for the creation of a short line, as has been at least the

opinion of this chairman on some of the proposals that have been brought forth.

So, I think that we will all find ourselves pretty much in the same position as the nominee, and it is clear from her record on these matters that she has been a leader in the State of Ohio.

Let me give you a softball question to start with, Ms. Molitoris. Certainly, you bring a perspective from outside the beltway which I think is very healthy. After viewing the Federal Railroad Administration from your key capacity in the State of Ohio, you must come here with some thoughts, some suggestions, some possible initiatives, some possible changes that you would like to put forth if you are confirmed as the Administrator of the FRA.

If so, what are some of your proposals? Please give us a bit of a viewpoint, if you will, as to what is on your mind as you are about to undertake this very important assignment?

Ms. MOLITORIS. Thank you, Mr. Chairman. I do have some ideas. First of all, from the perspective of Ohio I have to tell you that the staff of the Federal Railroad Administration and the administrators I have worked with, Bob Blanchette and then John Riley and then Gil Carmichael, have always impressed me with their responsiveness, with their ability to hear our concerns, and to help us to the extent that they could, within their budgets and within their legislative authority.

Since I have been a Special Assistant to the Secretary I have observed a number of things. One of them is that I believe someone asked me today if my family was here. And I said that my husband and my children and my mother were not, but my rail family was here. And in fact, they are. And I think that kind of character and the opportunity to work together for the common good is a characteristic of the fine professionals at FRA.

One of the tremendous opportunities, if I am confirmed, is to work with the Secretary, who has rail transportation very much on his and the President's agenda. Secretary Peña cares about the eighth floor—that is, FRA—and is very involved and has shown his interest by attending and by communicating even by video with all sorts of rail constituencies. I think this bodes very well for the kind of cooperation and support that we are going to get in the decade of the nineties when rail transportation has an opportunity to impact not only the economy, not only rail jobs, business jobs, and rail companies, but also the quality of life and the environment of our country.

I think if there is one word that might characterize my perspective, Senator, I would like to say that one would be proactive. I think that goes to the very heart of some of your comments about the importance of coming to you for your counsel and advice and to work with your staff concerning the kinds of initiatives that would really move rail transportation to its cutting edge competitive best in the 1990's.

I think the term "inconclusiveness" is a very important word because all parts of the rail industry are critical to success, and that would be the rail operators, rail labor, the suppliers, the manufacturers, and the consumers, our customers. I think those qualities are very important. Creativity and using technology advancements are very important to what we would like to do in the future. We

need to take the creative genius of the rail industry and look at defense conversion opportunities as a real chance to make tremendous strides in the nineties.

And last, I do not know about you, Senator, but I think just about everybody that you just barely scratch is a rail advocate, whether they know it or not. And I think we can harness the support for rail transportation in all its forms, from historical to maglev and everything in between, and have a constituency that will be able to stand up and support the leadership that your committee and the Congress and the administration is providing.

Senator EXON. Thank you very much. Let us talk about grade-crossing safety. I know that is an area in which you have been very much involved, as we have been here. Please tell us more about your former role with Operation Lifesaver in the State of Ohio. What new efforts will you undertake as the administrator in the important area of grade-crossing safety? What about issues related to trespassing?

I also am giving you an opening here to talk about something in which I know you have been very much involved. It is something named after a football team, as I understand it, in Ohio. The first time I ever heard of the grade-crossing safety device which you have was when we turned out all the lights in this room one day and someone was talking. I thought they were talking football. It turned out to be it was a grade-crossing device named after a football team.

Ms. MOLITORIS. The Buckeye Crossbuck. Certainly, if there was a legacy to leave, one of the most important ones would be safety. And it has many parts, but highway railroad grade crossings are a tremendous source of accident and death in our country.

One of the things I can report to you, Senator, is that Secretary Peña has found a wonderful person who is now confirmed and active as the Federal Highway Administrator. His name is Rodney Slater. And Mr. Slater, as well as Mr. Gordon Linton from the Federal Transit Administration—he is the designee waiting to be confirmed—are to work closely with the FRA.

We would propose to work together closely with the Federal Highway Administration to design new initiatives for railway highway grade crossings. For example, as you know, the money which is given to the rehabilitation and improvement of signage and other safety improvements at grade crossings comes through the FHWA. And so I believe that partnership is extremely important.

As you know, there is an initiative started by Gil Carmichael aimed at closing redundant crossings. This is an area that we must work closely with the Federal Highway Administration on. And there are issues with regard to the flexible use of funds, how we can motivate towns and communities to close crossings, because those that are unnecessary can provide a tremendous help to our effort for rail safety, not only for high-speed rail, Senator, but also for freight.

And so all elements of the rail industry must be involved in this effort. And I think perhaps you have seen the program, one of the first programs I saw when I came to the FRA, and I will not mention the network because I will probably get it wrong, was about yuppie hoboes. It was a big glamorization of what it was to tres-

pass. And they glamorized it and said a lot of things about the fact that it was fun because it was illegal.

This kind of promotion of potential death and injury cannot go on, and we need to take a very strong leadership role with the media to say there is responsibility here and to try and convince and exhort them to withdraw that kind of media coverage. There is even an 800 number to join this group.

And so if confirmed, I can assure you that we will design a public education campaign that will reach out to people and have as its goal behavior modification because at grade crossings and regarding trespassing, all of those issues must be resolved by several means.

We plan to work closely with Operation Lifesaver. As you know, FRA promotes and funds Operation Lifesaver, and I have found them to be a very professional and very dedicated source of effort, and I want to work closely with them to come up with a program in the nineties that can really reduce the death and injury.

Senator EXON. Very good. Let me ask you about an article that appeared in the Journal of Commerce, I believe it was in yesterday's edition, that discussed a 3-day conference on railroad transportation and research in the safety area. The conference is sponsored by the Federal Railroad Administration, the Association of American Railroads, and the Transportation Research Board. The article stated that over 120 participants were invited.

My office received a number of complaints yesterday and continuing into today, because apparently no one from rail labor was invited to participate. Could you tell me why railroad labor was not invited to this conference? I do not know whether or not you had anything to do with that. What do you believe, then, is the appropriate role which rail labor should play regarding railroad safety and research in such matters?

I happen to feel that railroad safety is everybody's business and nobody, certainly not the unions, should be left out.

Ms. MOLITORIS. Senator Exxon, I did not know about this conference until presented with the article this morning. However, I have asked a few questions. My understanding was that the people who planned this, and of course it was planned some time ago, did make some effort to contact someone at rail labor. However, the fact of the matter is there is no rail labor representative attending that conference. And I think that is a deficit for the conference and a deficit for us.

I think that one of the things we need to do is continue to underscore the definition of what the rail industry is, and I have repeated it several times. I do not think I have said it too often to repeat it again. It includes railroad operators, the railroad companies, rail labor, suppliers, and the consumer. And I think that that kind of a definition we need to underscore and emphasize.

The fact of the matter is rail labor has most to gain from safety. They are the people on the ground that keep these railroads running and we are responsible to them and to their families for their safety.

Senator EXON. Well, thank you very much for your statement. As I indicated to you when we had our informal meeting preceding these hearings, we all have to work together on the whole matter

of highway safety and rail safety. We have to get all the participants involved in that. As you have indicated, we need to do a better job of promoting awareness on the part of the public on all of these things—an education and a selling job. We are not going to get these things done unless we get everyone involved.

I indicated earlier that I have been trying as best I can, without a great deal of success, to bring railroad management and railroad labor a little bit closer together, in order to end what I call the "dog-and-cat" relationship which I never have been able to fully understand or appreciate. But no one can know the "dog-and-cat" relationship between railroad management and railroad labor until you get involved in it.

So, I think we may be able to further some education along those lines, too, because railroads are an absolutely critical part of our transportation infrastructure. I am sure that we are going to see more passenger service on railroads—maybe including South Dakota some day. But if we are going to accomplish such goals, it is going to take a great deal of cooperation and understanding among all involved.

I asked the question about the *Journal of Commerce* story to give us an opportunity to get into this matter of cooperation. A number of us on this committee have been trying for a long time to sell and educate the main participants—management and labor both—that it is in their interest, as well as in their customers' interest, to try to work out some of these problems without getting into knock-down, dragout, "dog-and-cat" fights whenever they can be avoided.

Let us talk now a bit about Amtrak. Graham Claytor has testified that Amtrak's continuing capital shortfall must be addressed if Amtrak is to remain a viable part of our national transportation system. How do you believe Amtrak should balance its existing commitments to provide conventional long-distance train service with its apparent desire to expand its role in the high-speed area, as well?

Ms. MOLITORIS. I think both kinds of rail transportation can be successful for Amtrak. Going to the heart of the comment by Mr. Claytor, no transportation company can be successful if its capital plant is not solid and responsive to the transportation needs they are trying to provide the consumer. We need to have well maintained service to our customers for Amtrak.

However, I think the opportunity that high-speed rail provides for Amtrak is the opportunity to make a profit. If you look around the world, Senator, you see all long-distance service being less than profitable, but you see the high-speed rail corridors being a buttress and a foundation of profit that helps cover some of the losses on the less populated long-distance runs.

I think it is an important policy decision that we must work on, with the administration and the Congress, to really respond to Senator Pressler's comment: Is rail transportation only going to be for high-speed, highly populated corridors, or are we going to balance these two with enough of an investment that quality transportation can occur?

I believe that the American public continues to increase its call for rail transportation as an option. And I do not think anyone sees it as replacing other forms of transportation, but it needs to be a

viable option. And if you look around the world, you see the kinds of economic incentives and benefits that happen when you have high-speed rail.

And if you look at the data, you know the kind of help that it brings to our problems with the environment, and the kind of response it can make to Clean Air Act requirements.

The President will be appointing two more members of the Amtrak board to bring it to its full membership, and I think that the future of Amtrak is extremely important to the Secretary and the President, and certainly to the board members. We will work with them continually to come up with a way to help Amtrak reach self-sufficiency, and to help provide for the kinds of capital needs and operating needs that Amtrak has.

Senator EXON. I was not going to ask this question, but your recent statement jarred my memory. I am delighted to hear your prediction that the President will be nominating the Amtrak board members in the not-too-distant future. Can you be a little bit more specific? Are you speaking from personal conversations with the President, or just what you have heard and hope?

Ms. MOLITORIS. Mr. Chairman, I am not speaking with reference to a personal conversation with the President. It is just that the Secretary and I have discussed the importance of Amtrak and its board and the decisions that face us, and we both wait with great hope and expectation for these appointments.

Senator EXON. You handled that very well. [Laughter.]

I understand that both railroad labor and railroad management have expressed some concerns about the President's high-speed rail bill that you and I and others have worked on very closely with the Secretary. What are your views about the concerns that railroad management and railroad labor are expressing, and how do you think they can be resolved?

Ms. MOLITORIS. Mr. Chairman, the initiative of the President is a very complex program. And, in fact, it is the first piece of major high-speed rail legislation that has ever been introduced. And so I think it should not be a surprise that any complex piece of legislation would need to respond to representative concerns from all parts of the industry.

My observation, from the work of the Secretary and his promotion of this bill, is that he is working very closely with the House and the Senate on elements that are important to both labor and management. And those, as you know, have to do with liability from the railroad management side, and the protections and assurances that labor is looking for.

So, that work goes on. I think that we should hear in a fairly short amount of time some response. And I know the Secretary is very hopeful that we can move forward together with solid support from all parts of the industry. And I know that he is hoping, sir, that the Senate will also move expeditiously on your bill.

Senator EXON. We hear a great deal today about all of the potential that we see in the future, and I agree that there are great possibilities. Discussion frequently centers on incremental high-speed rail, but then you also talk about maglev. We had a hearing here not too long ago where I introduced, to the surprise of many, a magazine that sold for 15 cents, a published magazine, which indi-

cates its vintage was some time around 1917 or 1918. Maglev was pictured on the front cover of this magazine, the Electrical Experimenter. Now, almost a century later, we are still talking about it.

I am asked, What do you think we are going to have, incremental high-speed rail or maglev? Some people say it must be one or the other. Other people argue that there is probably a place for both. Much depends upon how private industry and State and local governments, other than the Federal Government view this.

What is your position on investment in high-speed rail versus maglev? From your experience, where do you think we are most likely to go in the future? They may have some bearing on funding provided for either or both of these options as we move on down this road to improved passenger rail service.

Ms. MOLITORIS. I certainly support the administration's high-speed rail initiative, Senator. And if you look at the bill, you will see a bill that provides a broad range of flexibility to accommodate the needs and concerns and desires of the corridors that apply for help.

I think that the Secretary has stated clearly that he looks to get a lot of interest and response to the high-speed rail initiative. And I think perhaps people think that the FRA or the administration or the Department of Transportation is going to decide. In fact, we are going to be partners.

As a matter of fact, if you look at my record, sir, you will find that I was part of the initial team that started looking at high-speed rail back in 1977. And the exciting thing about high-speed rail is that this is a grassroots movement. This has bubbled up from the State and local levels. And I think there is an increasing voice that says we need this option.

However, until the President began including it in his campaign, and then introduced the high-speed rail initiatives, we did not have a strong Federal partner. And I think that this partnership is really what we should focus on.

When people say that you cannot have one or the other, I know that they are concerned about the available resources. But I think we can make decisions which are both short term and long term. And I think if you look at the other forms of transportation, there is not one kind of car. There is not one kind of airplane. And I think that the rail transportation spectrum of options will occur. And what the Secretary is hoping is that our investment and leverage of the money that is provided, even in a tight budgetary time, will show the benefit of such investment and encourage the Congress to increase that funding in the years to come.

Senator EXON. Very good. Let us just talk a minute more about rail safety. As you indicated to me in our earlier conversations, there are a number of rulemakings, particularly affecting safety, which remain pending at the Federal Railroad Administration. Can you provide the subcommittee with a possible timetable for completing these rulemakings?

If you do not have it now, I understand that. I would appreciate it if you could submit something for the record by tomorrow as to the status of pending actions and, at the very least, your priorities in this area.

Ms. MOLITORIS. Are you talking about all the rulemaking, Senator? Because there are 33 active rulemakings.

Senator EXON. I know there are a great number of them, and I do not expect you to itemize them at this time. Perhaps you could just highlight the initiatives which are most important from your perspective.

Ms. MOLITORIS. A few comments about the rulemaking process. I think that when I heard you say in your opening statement that there were many times when perhaps issues could have been resolved by a more proactive approach, I certainly agree with you about that. Rulemakings, as you know, are very long, very complex and extraordinarily expensive in terms of human resources and dollars.

And so we are faced with 33 rulemakings at this time, and I believe I have reviewed the record and status. I believe that many of them will be produced and reported out close to the required deadline. I cannot say that all of them will be produced by the deadlines required by Congress.

I can assure you that, if I am confirmed, this whole area will be a priority for my attention. And I would say to you that I would like to come to you and to your staff to sit down and look at the resources that FRA has and the challenges of the rulemaking process and to seek any advice and counsel that you might give us, and be sure that you have a list of the status of each.

In fact, I would be happy to provide for the record, by tomorrow, a list of the status of each of those.

Senator EXON. Thank you. That will be very satisfactory.

I would say to you that there will undoubtedly be additional questions which we would like to submit to you for the record. Hopefully, you can get them back in to the committee by tomorrow.

At this time, I have no further questions.

Congressman Brown, is there anything more that you would like to add? We are just delighted to have you here, and I am very much impressed with the nominee from the State of Ohio.

Mr. BROWN. We are, too. Thank you, Mr. Chairman.

Senator EXON. I would simply say that I am going to move her confirmation process along in the Senate as quickly as I can. And then we will get the job done.

With that, let me say thank you very much for being here. We are very impressed with your credentials and very pleased with the nomination. We also are looking forward to working very closely with you, Ms. Molitoris, as we did with your predecessors, Mr. Riley and Mr. Carmichael, with both of whom we had good working relationships, and we want to continue that with you. You will find our staff and members of this committee willing and anxious to help and move things along as speedily as we can.

Ms. MOLITORIS. I want to thank you so much, Mr. Chairman, for your gracious hospitality here today and for your probing questions, all of which were so critical to the work I would like to do with you, if confirmed. And I just want to say for the record that I am very gratified by the support and help and forthcoming counsel that I have received from your staff, Mr. Curtin, Ms. Morgan, Mr. Itzkoff, and Mr. McLean. They have been so helpful, and I am

very grateful and look forward to the opportunity to be a partner with them in the years ahead.

Senator EXON. Thank you very much.

We are adjourned.

[Whereupon, at 3:25 p.m., the hearing was adjourned.]



## APPENDIX

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### PREPARED STATEMENT OF SENATOR BURNS

Thank you Mr. Chairman. I would like to welcome Ms. Molitoris here today for her nomination to be Administrator of the Federal Railroad Administration.

I look forward to working on our significant rail issues with her. Of course in Montana we rely mostly on our freight rail service to haul our coal, wheat and other goods in and out of Montana.

Burlington Northern, AMTRAK and Montana RailLink all operate in Montana. We have problems and opportunities similar to every other state, but of course ours are most important to us. Keeping the lines open for the freight as well as passenger service is utmost important.

However, operating regulations that inhibit service are always of concern. I understand that there are at least 33 rulemakings pending at the FRA. I would hope that the rural lines in states like Montana are considered equally when new rules are being weighed. Many decisions are made in our federal agencies that seriously impact the everyday operation of our businesses in this country. And many times these decisions are balanced by populations rather than common sense.

I would encourage Ms. Molitoris and her staff to look fairly upon those various populations when making those decisions.

Ms. Molitoris has been selected for this position based on her valuable experience with the Ohio Department of Transportation. She has been asked to manage an even larger operation at the FRA. I'm sure that she will do a very good job and I wish her the best and look forward to working with her.

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### QUESTION ASKED BY SENATOR EXON AND ANSWER THERETO BY MS. MOLITORIS

**Question.** The City of Gering, Nebraska, has taken the leadership in developing and testing an automated grade-crossing warning horn system. The automated system provides a warning to vehicles at the crossing without requiring approaching trains to sound their horns, thus avoiding the dispersal of sound throughout the adjacent community. The initial test has been completed and the city would like to expand this experiment. If successful, the Automated Horn System could provide increased safety and comfort to Gering and communities with complaints about train horns in densely populated areas. If confirmed as Administrator, will you take a leadership role in cutting through red tape so this new technology can be developed further and deployed?

**Answer.** An initial installation of the Automated Horn system has been successfully demonstrated with respect to its technical functioning. The next step is to determine motorist response after initial implementation. If the technology proves successful it could be an asset in attracting communities' support to increased rail transportation. I will aggressively pursue this issue to determine if we can offer meaningful warning that is heeded by the motorist as reliably as if the horn were sounded from the train.

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### QUESTIONS ASKED BY SENATOR PRESSLER AND ANSWERS THERETO BY MS. MOLITORIS

**Question 1.** Under 49 CFR § 1180, et seq., the Department of Transportation is required to analyze and comment on the impact of proposed common control major transactions such as the pending UP/CNW transaction now pending before the ICC. To date, I have noted a dearth of analysis of the impact this transaction could have on affected short-line and regional railroads. I know quite a number of them are very concerned about the impact this transaction will have on their operations and ability to provide and improve essential services. To date, all the analysis seems to be focused on the Class I roads. I would very much like to see a little more attention being paid to the concerns raised by the small guys. For example, the DM&E rail-

road in my state has entered the case with a list of specified concerns. Is there any rigorous analysis being given to those concerns? Could you supply for the record what that is and what, if anything, the Department plans to do to review and comment on the concerns of these smaller lines? I would appreciate specific analysis concerning issues raised by the DM&E, but also a general outline of what attention the Department is giving to the smaller operators out there who are providing service where the Class I's have been bailing out.

Answer. The Department of Transportation has no statutory requirement to participate in railroad merger proceedings before the Interstate Commerce Commission. However, FRA, through the Department, generally does participate in merger and consolidation proceedings where significant competitive issues have been raised. In the case of the Union Pacific's application to control the Chicago and North Western, FRA is reviewing the filings and comments submitted to date, including those raised by the DM&E, but has not yet finished the analysis or taken a position on the merits of the case.

As a general issue, FRA is very interested in the concerns and condition of smaller railroads. They are an integral part of the U.S. railroad industry, and provide critical services to their shippers and their local economies. Unlike the Class I railroads, small carriers are not required to submit operating, traffic and financial data to the ICC, so FRA cannot monitor their part of the industry as closely as we can the major railroads. However, FRA has published two studies which addressed deferred maintenance and capital needs of shortline and regional railroads, and is working with the American Short Line Railroad Association to develop data that would provide a more detailed picture of this important group of carriers.

*Question 2.* I have worked very hard in recent years to encourage and develop short-line and regional railroads as an alternative to Class 1 abandonment. Do you have any plans with respect to what your approach to this issue would be?

Answer. While Deputy Director of Rail Transportation, the Rail Division in Ohio worked with local communities and industries that needed Class I rail transportation. Often all efforts to retain Class I service were unsuccessful. Shortline and regional railroads became the only available option in effort to retain rail service in these communities.

Because of my experience, I know the importance of smaller railroads. During the 1980's Ohio lost almost 20 percent of its Class I service (in the process of Class I rationalization permitted under Staggers). The Rail Division developed a strategy for responding to rapidly evolving conditions in the rail transportation system. The goal was clear: retain as much rail transportation and as many lines as possible.

This strategy had several parts:

(a) Promote expansion of existing rail-dependent companies, and recruit new ones at locations on Class I rail lines to increase rail business wherever possible so that abandonment will not be a good economic choice.

(b) Develop partnerships with rail labor, the operating railroads, shippers and state and local officials to present "success story" rail seminars about the importance of rail transportation and how to enhance it.

(c) We used every conceivable method to retain Class I service. In fact, we called a rarely used Section 401 conference to challenge the Class I's to work with us and each other in order to keep Class I's in Eastern Ohio. I intend to utilize the authority conferred by Section 401 more frequently than it has been used in the past to respond to changing rail needs of particular areas, and to promote shortlines and regional railroads wherever practicable.

(d) As a last resort, when a line was going to be abandoned, we would work with communities in their efforts to retain rail service using LRFA funds and state money to buy abandoned lines and setup shortline service. I believe that the lessons learned from these experiences in Ohio's state program can be successfully employed across the country.

*Question 3.* Also relating to regional and short-line development, labor organizations have historically been concerned that Class I roads not be allowed to use short-line spin offs as a sham transaction to escape legitimate labor protection obligations. I share that concern. As I understand the general rule in this area, Class I spin offs have to be a truly independent railroad to avoid labor protection and related obligations. While there are often contracts and "feeder" agreements between the Class I and the spin off, they cannot allow the Class I to restrain competition and dictate terms of the spin off's basic operations, shipping rates, financing opportunities, and other aspects required to have a truly independent railroad. Whether that basic understanding is accurate or not, it seems this is a rather hazy area in determining what is a legitimate spin off and what amounts to a feeder line so dominated by the Class I as to warrant refusing the transaction or imposing labor protection after the fact. I would appreciate your interpretation of where the line

is or ought to be as to the distinction between legitimate feeder line agreements and a sham transaction.

**Answer.** In general, the creation of new shortline railroads is a legitimate attempt to preserve service on lines that are not cost-effective for Class I railroads to operate. The DM&E is an example of this development. The ICC's policy, which has been upheld by the courts, is not to impose protection if the purchaser of the spun-off line is a new railroad; if the purchaser is an existing railroad, even one that is independent of the selling railroad, labor protection is required.

For new carriers, there is no "bright line" test of control, in my opinion. Many factors, including ownership and management responsibility (if the new line is a public corporation), financing agreements, etc., would have to be evaluated to determine if a particular transaction creates a new line that is not controlled by the seller. However, these factors, in and of themselves, do not indicate dependence. For example, many Class I sellers provide some sort of seller financing for new lines, particularly because small railroads often find it difficult to find financing in the marketplace. In sum, these are factual determinations entrusted to the expertise of the ICC.

Under current policy, the ICC retains the right to revoke an exemption at any time and impose labor protection if circumstances justify such protection. I think that this approach strikes a good balance between the need to preserve rail service and the need to provide legitimate labor protection.

**BACKGROUND:** During his campaign, President Clinton stated, "In my administration, advancing high-speed rail and maglev technologies will be a top priority in the formation of a comprehensive transportation policy."

**Question 4.** Could you provide some of the justifications for continuing the maglev research program?

**Answer.** The National Maglev Initiative has conducted a comprehensive study over the last three years to answer that question. A study, to be included in a final report due to be released next month, concluded that a U.S. maglev system could have significant performance improvements that warrant further development compared to existing high speed ground systems such as the German maglev system and the French TGV high speed rail system.

The benefit of having a U.S. maglev system is that it can achieve improved trip times, resulting in increased ridership, sufficient to cover all operating and capital costs in the densest corridors and able to cover operating costs and a share of capital costs in most of the other markets studied. This performance was, in general, better than the German maglev, and comparable to or better than the French TGV in most of the other corridors.

In addition, the development of a U.S. maglev system would put U.S. manufacturers back into the competition for high speed ground systems with the European and Asian countries. It would add high technology jobs to the U.S. industry at a time when defense reductions will be impacting the high technology sector of U.S. industry.

Maglev has the potential for reducing existing airport and highway congestion, reducing petroleum dependence and improving emissions by virtue of its electric propulsion system. These benefits are judged to be sufficient to proceed with the next phase of a prototype program, to have the technology available as a viable alternative for early in the 21st century.

**Question 5.** What will it take, both financially and technologically, to make the United States competitive in the high speed rail industry?

**Answer.** France, Germany, Japan, Sweden, Italy and Spain have a considerable advantage over the U.S. in high speed rail since they already have mature systems in operation. The French have the lead in very high speed rail systems with their TGV which has been in service for thirteen years. The Japanese, of course, have been operating since the 1960's, but have only recently started to upgrade their system to very high speeds. Sweden has a high speed system capable of tilting through curves with a suspension and wheel design that permits faster speeds through curves.

In contrast, the U.S. does not have any companies that are currently involved in high speed rail design and manufacture. This is a great challenge to the U.S. in its efforts to become competitive with foreign countries in the manufacture of high-speed rail equipment. In addition, most (if not all) of the high speed rail development in Europe and Japan has been subsidized by the governments in those countries. For the U.S. companies to obtain a competitive position will require them to attain knowledge about the technologies involved and the practical experience that can only be attained through high speed rail construction and operations. Historically, the best way to obtain that knowledge has been by hands on design, test and operation experiences.

Alternatives include joint ventures for construction, manufacture or assembly in the U.S. using foreign company designs or to work on new approaches for meeting specific U.S. requirements. One such opportunity is the need for a non-electric high performance locomotive for use in high speed corridors where electrification is not justified. Other opportunities are for developing major subsystem technologies which can be incorporated into existing designs for U.S. application.

The U.S. industry will require financial support such as available through President Clinton's high speed ground transportation initiative to develop new technologies that can improve on what's available from foreign competitors.

**Question 6.** What initiatives in support of both high-speed rail and maglev would you like to see undertaken?

Answer. It is important to address two major elements to achieve significant advancement in high-speed ground transportation usage in the U.S. A comprehensive program to improve existing infrastructure is necessary in the near term to improve mobility in congested travel corridors. Combined with that, we need a technology development program. Both near-term technology improvements for steel-wheel on rail, and longer term improvements, such as are available through magnetic levitation systems, are necessary. President Clinton's high-speed ground transportation initiative is a well-balanced approach to achieving these improvements.

**Question 7.** How do you and Secretary Peña intend to implement the President's stated policy priorities?

Answer. Secretary Peña and I strongly support the President's High Speed Ground Transportation initiative. The Secretary has announced a comprehensive program to implement that initiative and has sent to the Congress the needed enabling legislation, the High Speed Rail Development Act of 1993. This has been introduced by Senators Hollings, Exon and Lautenberg as S. 839. We are now preparing to implement the program quickly upon approval of this legislation and necessary appropriations.

**Question 8.** How does the United States rank in comparison to high-speed rail program initiatives in other industrialized nations?

Answer. While other nations have developed balanced transportation systems, the United States has focused its intercity passenger transportation resources on the highway and air modes. As a result of these national priorities, the United States has not yet developed high speed ground transportation systems which can provide the top speeds being operated on specific corridors in Europe and Japan. The Clinton Administration initiative will begin to move the United States toward a more balanced intermodal system.

**BACKGROUND:** South Dakota is one of only two or three states that does not have passenger rail service. In the last several years, I have been active in attempts to acquire some type of passenger rail service for my rural state.

**Question 9.** What steps do you plan to take in helping rural states both get passenger service and to maintain that service?

Answer. The issue of rail passenger service for low population centers is a policy decision to be addressed by Congress. As we know, highways are part of the transportation systems in both densely and sparsely populated areas. If the U.S. includes rail transportation for low population areas where costs will not be covered by the revenues, then the Congress must commit to an investment package which includes funding for such service. The advantages of rail transportation (safety, productive travel time, environmental and energy benefits and mobility for the ages) can be available for all citizens if we commit to the necessary investment.

**BACKGROUND:** The President's FY 93 supplemental infrastructure/stimulus bill, as well as the President's FY 94 proposed budget, failed to include any funds for the Local Rail Freight Assistance Program or for the Section 511 Loan guarantees. Both of those currently-authorized federal efforts are administered by the Federal Railroad Administration and provide targeted rail infrastructure investments in rural America for those lines that need it most. Such measures have received strong bipartisan support from the Senate Commerce Committee, including from both subcommittee Chairman Exon and myself. Last year, the Congress appropriated \$8 million for LRFA.

**Question 10.** Are you aware of why the Administration has failed so far to include any funding for the LRFA Program and Section 511 Loan Guarantees?

Answer. The past Administration's budget did not include funding for the LRFA Program or Section 511 Guarantees, and this Administration faced similar issues. Since the authorization for the LRFA Program expires after Fiscal Year 1994, the Administration did not add funding to the Budget because Congress had not yet determined if the Program would be reauthorized. While there is no statutory expiration of the Section 511 loan guarantee program, FRA has not received any applications for several years. In addition, the Congress has not provided FRA any loan

guarantee obligation authority to enable FRA to fund any Section 511 applications in recent years.

*Question 11.* If confirmed as FRA Administrator, will you support these programs to help marginal rural rail lines?

Answer. The Section 511 Program provided valuable assistance to financially marginal railroads in the late 1970s and early 1980s. The LRFA Program has been very successful in ensuring the continuation of rail freight service on many light density rural lines. The return on investment and the success in not only saving service but attracting new business to these lines underscores the benefits of this program. If confirmed, I will work with the Secretary in exploring the continuing need for funding of these programs.

*Question 12.* How do you propose to continue and to improve upon these programs?

Answer. If the Section 511 Program is provided new obligation authority, I would explore improvements which do not compromise the Federal creditor interest. One of the improvements I would propose to the LRFA Program is to encourage states to loan Federal grant funds to railroads so that the Federal funds have a continuing impact as loans are repaid and reloaned. Currently, states have the flexibility to grant or loan LRFA funding. States have full discretion to set the financial terms and conditions of the loans and can tailor them to the needs of the railroads and their ability to repay.

*Question 13.* I also direct your attention to S. 731, the Rural Rail Infrastructure Act, which I introduced earlier this year to improve both the LRFA and Section 511 Loan Guarantee programs. Have you had a chance to take a look at this bill? If so, what is your reaction to it? If not, could you please take a look at it and provide me with your reaction in a written follow up to the hearing.

Answer. S. 731 reauthorizes the LRFA Program at \$100 million a year for each of the years 1994, 1995, 1996, and 1997. With regard to Section 511, the proposed changes would impact both the Department of Transportation and the Department of Treasury as well as potential private sector lenders. As the legislation moves forward, FRA will work with you and the other interested parties to address the technical details of the Section 511 changes as well as the appropriate authorization level for the LRFA Program.

**BACKGROUND:** The Surface Transportation Subcommittee held a hearing on the safety of rail-highway grade crossings. I understand that the Intermodal Surface Transportation Efficiency Act of 1991 authorized \$30 million for grade crossing elimination in certain areas of the country to facilitate the use of interstate highway right-of-ways for high-speed ground transportation systems.

*Question 14.* How would the safety of road travelers be impacted by high-speed rail systems?

Answer. Section 1010 of the Intermodal Surface Transportation Efficiency Act of 1991 authorized \$30 million for the elimination of hazards at highway-rail grade crossings in up to five high speed rail corridors designated by the Secretary of Transportation. The safety of the road travelers would be increased by the diversion of some highway users to the high speed rail service. The safety of highway users crossing the tracks will be improved by closing redundant crossings, grade-separating heavily used crossings, and installing improved crossing safety systems at the remaining crossings. Grade crossings will not be permitted where speeds exceed 110 mph, unless the crossing is equipped with an effective barrier/train detection system. Successful demonstration of such a system has not been attempted in the United States, but an effective full barrier system used in Sweden will allow us to learn about applications this technology may have for the U.S. high speed corridors. Since grade separations are expensive, FRA is examining the possibility of developing and demonstrating this technology.

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